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and paid the costs that judicial officer might in his discretion have superseded the judgment of conviction. But the local law-maker, keenly appreciative of the value of a poor man's labor, stipulates that in such appeals, if unable to pay costs or give bond, the prisoner shall not be discharged. Then it is true, that before his cause, with all its importance, could have been heard, had the petitioner survived, the punishment would have been suffered and the judgment on appeal would have been worthless even had he prevailed." "The sentence against him is void . . . for want of due process of law."

We must all agree that the court has here touched a vital point. "Due process of law" is a phrase hard to define, but this case seems a good precedent for a sound principle, that in convictions involving infamous punishments, "due process of law" requires a fair right of appeal—that "one man shall not adjudge infamy."

But with this clear basis for the decision, we must look on certain other portions of the decision as *obiter dicta*, and cannot wholly agree with the principles which they seem to set forth. It is well-established that the first ten amendments to the United States Constitution restrict only the national government and not the states. Citing 10 *Rose, Notes on U. S. Reps.* 1074, the court seems to hold that "due process of law" in prosecutions for infamous crimes by the states requires presentment or indictment by a grand jury, therein apparently running counter to the Supreme Court decision in *Hurtado v. California*, 110 U. S. 516, 4 Sup. Ct. 111. In like manner the syllabus by the court holds trial by jury to be a right of the accused in such cases—a statement which would seem to reverse the doctrine of *Livingston v. Moore*, 32 U. S. (7 Pet.) 55; *Justices v. Murray*, 76 U. S. (9 Wall.) 278; *Edwards v. Elliott*, 88 U. S. (21 Wall.) 557. Of course the decision is not based on the first ten amendments, directly, but these *dicta* seem to attain the same result by reading the first ten amendments into the words "due process of law" as used in the fourteenth. Possibly this is a logical necessity from the wording of the Fourteenth Amendment.

The poor policy of such Federal restraint on the action of the states was clearly pointed out by Chief-Justice Marshall in *Barron v. Baltimore*, 32 U. S. (7 Pet.) 250. It seems unwise for the national government to attempt any narrow regulation of the judicial procedure of every local jurisdiction. So while we can agree with the policy of defending the right of appeal in cases of infamous crime, we trust that the *dicta* of this case may not be followed to the extent of reversing *Hurtado v. California*, *supra*.

DEPRIVING FOREIGN CORPORATIONS OF THE BENEFIT OF THE STATUTE OF LIMITATIONS.

The familiar doctrine announced in *The Bank of Augusta v. Earle*, 13 Pet. 538, that a corporation is the creature of positive law, and where that law ceases to operate can have no existence,

was applied specifically to the exclusion of a foreign corporation from the benefits of the Kansas Statute of Limitations by a somewhat recent decision of the Supreme Court of that state. *Williams v. Metropolitan St. Ry. Co.*, 74 Pac. 600. The statutory language applicable to the case is as follows: "If when a cause of action accrues against a person he be out of the state, the period limited for the commencement of the action shall not begin to run until he comes into the state." It was held that a foreign corporation operating a street railroad within the state, and having agents there upon whom service of process could be made, was a person out of the state within the meaning of this clause of the statute.

This question as to the right of a foreign corporation to take advantage of the statute of limitations first arose in 1829 in the case of *U. S. Bank v. McKenzie*, 2 Brock. (U. S. C. C.) 393, an action brought in Virginia by The Bank of the United States, a corporation existing under the laws of Pennsylvania, against the indorser of a note discounted at its branch bank at Richmond. The statute of limitations was pleaded against the bank and it was held that the plaintiff did not come within the saving clause of "beyond seas or out of the country," the residence of the corporation being at Richmond and not at Philadelphia so far as the clause applied to the locality of the plaintiffs.

Later, the question came up in New York in 1845. It was held in *Faulkner v. The Delaware and Raritan Canal Co.*, 1 Denio 441, that a foreign corporation could plead the statute of limitations; that the cases excepted were against persons who had for a time been out of the state, but had afterwards returned within its limits; that the provision manifestly applied to natural persons only and could not be made to embrace corporations. This case was followed in 1857 in *Olcott v. The Tioga R. R. Co.*, 26 Barb. 147.

These cases were, however, overruled in *Olcott v. The Tioga R. R. Co.*, 20 N. Y. 210, in 1859, and the rule has ever since been settled in New York that a foreign corporation is within the exception of the statute of limitations as to persons absent from the state when a cause of action accrues against them. In Nevada, under the provisions of a statute similar to that of New York, it was held that a foreign corporation could not set up the domestic statute of limitations as a defense to an action brought in the domestic state either in real or personal actions. In an action of ejectment brought against a foreign corporation, the court ruled that under the statute a foreign corporation could not obtain title to land in that state by adverse possession. Later the New York rule was adopted in Wisconsin, and now by Kansas.

The majority of decisions maintain a rule which it is believed is more consonant with justice. The rule, briefly stated, is "that if, under the laws of the domestic state, the corporation has placed itself in such a position that it may be served with process, it may avail itself of the statute of limitations when served." *Wall v. Chicago, etc., R. R. Co.*, 69 Ia. 498.

Service of process is the test. The corporation must place itself in such a position that at all time service of process may be had upon its agents. A foreign corporation whose business is such that it is not incumbent upon it to put itself in a position to be at all times subject to the service of process, ought not to be permitted to shield itself behind the statute of limitations, because it may at some time or times (perhaps unknown to one having a cause of action against it), have an agent in the state upon whom process could be served. *Winney v. Sandwich Mfg. Co.*, 86 Ia. 608. There is no presumption that the corporation has at all times been amenable to process so as to enable it to take advantage of the domestic statute of limitations. This is a fact to be shown by the corporation. *Hubbard v. United States Mortgage Co.*, 14 Ill. App. 40.

The Supreme Court of Illinois has held the "residence" of a corporation "to be where its business was done"; "where it exercises its corporate franchises." *Bristol v. The Chicago and Aurora R. R. Co.*, 15 Ill. 436. Judge Dillon, in *Stilwell v. The Empire Fire Ins. Co.*, 4 Cent. Law Jour. 463, regarded the proposition as reasonable and just, and said that if he were not foreclosed by other decisions, referring doubtless to those of Mr. Justice Nelson in *Day v. Newark India Rubber Co.*, 1 Blatch. 628. and *Pomeroy v. N. Y. & N. H. R. R. Co.*, 4 Blatch. 120, he would be strongly inclined to hold that a corporation created by the law of one state and doing business by permission in another, although a citizen of the former, was an "inhabitant" of the latter for purposes of jurisdiction. These views were approved by the Supreme Court of the United States in *Ex parte Schollenberger*, 96 U. S. 369. The justices held that the jurisdiction attaches upon the act of the party, and not by virtue of the state law, which has no other effect than to authorize the act; that the corporation is thereby found to be in the state, so as to be amenable, like those of its own creation, to the process of the courts established within it. They say that this was really settled, and *Day v. Newark India Rubber Co.*, 1 Blatch. 628, and *Pomeroy v. N. Y. & N. H. Co.*, 4 Batch. 120, overruled, by *Baltimore and Ohio R. R. Co. v. Harris*, 12 Wall. 65, in which decision Judge Nelson fully concurred. The decided weight of authority is to the effect that in this class of cases the foreign corporation is resident where by proper permission it carries on its business. New York, in its Code of Civil Procedure, has provided for personal service by summons on foreign corporations by delivering a copy to a person designated for that purpose. Such designation must specify a place within the state as the office and residence of the person designated, and the designation remains in force until the filing of a written revocation. While this designation remains in force, the corporation can claim the benefit of the statute of limitations. It is apparent that this course will in time be followed by those states which have followed the rule originally laid down in New York, depriving foreign corporations of the right to plead the statute of limitations. *Norris v. Atlas S. S. Co.*, 37 Fed. 426.